

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

v.

3.17 ACRES OF LAND, MORE OR
LESS, SITUATE IN STARR COUNTY,
STATE OF TEXAS; AND JUAN
MONTALVO, ET AL.,
Defendants.

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CASE NO. 7:08-cv-177

**AMENDED JOINT MOTION FOR ORDER ESTABLISHING JUST COMPENSATION
FOR TRACTS RGV-RGC-1079 AND RGV-RGC-1079E, GRANTING POSSESSION,
AND DISTRIBUTING FUNDS ON DEPOSIT IN THE REGISTRY OF THE COURT**

1. On June 21, 2008, the United States filed a Declaration of Taking for the condemnation of a fee simple interest in real property identified as Tract RGV-RGC-1005.¹ On June 25, 2008, the United States deposited \$10,900.00 into the Registry of the Court as estimated just compensation for Tract RGV-RGC-1005.² On August 2, 2017, based on final title and survey results the United States filed an Amendment to Declaration of Taking (hereafter “ADT”) to clarify that Tract RGV-RGC-1005 was actually comprised of several parcels of land with separate ownerships.³ Said tract was then subdivided and identified as fee Tracts: RGV-RGC-1104, RGV-RGC-1082, RGV-RGC-1081, RGV-RGC-1080, RGV-RGC-1079, RGV-RGC-1078, and RGV-RGC-1077, including temporary twenty-four month easement Tracts: RGV-RGC-1079E, RGV-RGC-1078E, and RGV-RGC-1077E.

2. The ADT acquired 0.031 acres of fee identified as Tract RGV-RGC-1079 and a

¹ Dkt. No. 2

² Dkt. No. 4.

³ Dkt. No. 23.

0.690 acre temporary (twenty-four month) work area easement identified as Tract RGV-RGC-1079E, both owned by Matilde Muñoz⁴ and Lucia G. Muñoz (hereafter both tracts are collectively referred to as the “Subject Property”).⁵ Additionally, the ADT estimated the value of the acquired Subject Property at seven hundred and 00/100 (\$700.00) dollars.⁶

3. Lucia G. Muñoz died intestate on February 18, 2014, upon her death her interest in the Subject Property transferred through Texas probate law⁷ to her children: Alma Muñoz, Azucena Muñoz Tressler, Carmen Muñoz, Maria Elizabeth Muñoz (deceased), Lourdes De La Garza (deceased), Matilde Muñoz, Jr. (deceased, aka Juan Muñoz or Matilde Juan Muñoz⁸), and Josue Samuel Muñoz.⁹

4. Maria Elizabeth Muñoz died intestate on August 17, 1975, with no issue and no surviving spouse¹⁰; her interest in the Subject Property transferred through Texas probate law to her siblings.¹¹

5. Lourdes De La Garza died intestate on October 6, 2011, upon her death her interest in the Subject Property transferred by Texas probate law to her children¹²: Joshua Kusbel, Michael Kusbel, Kezia De La Garza, and Leonardo De La Garza.¹³

6. Matilde Muñoz, Jr. (aka Juan Muñoz or Matilde Juan Muñoz¹⁴) died intestate on

⁴ Matilde Muñoz was not included as an interested party to this action because he died on June 3, 1994, prior to the institution of this action, and his interest in the Subject Property passed via Texas intestate law to his surviving spouse, Lucia G. Muñoz. Tex. Est. Code Ann. § 201.003(b)(2) (Vernon); Ex. 1, Declaration of Carmen Muñoz (Dkt. No. 79, Ex. 2).

⁵ Dkt. No. 23, Schedules CC, DD, and GG for Tracts RGV-RGC-1079 & 1079E; Ex. 2, Warranty Deed (Dkt. No. 79, Ex. 1).

⁶ *Id.* at Schedule FF.

⁷ Tex. Est. Code Ann. § 201.001(b) (Vernon).

⁸ Ex. 1 (Dkt. No. 79, Ex. 2).

⁹ Ex. 3, Aff. of Heirship for Lucia G. Muñoz (Dkt. No. 79, Ex. 4).

¹⁰ Ex. 4, Aff. of Heirship for Maria Elizabeth Muñoz (Dkt. No. 79, Ex. 6).

¹¹ Tex. Est. Code Ann. § 201.001(e) and 201.101(b) (Vernon).

¹² Tex. Est. Code Ann. § 201.001(b) and 201.101(b) (Vernon).

¹³ Ex. 5, Aff. of Heirship for Lourdes De La Garza (Dkt. No. 79, Ex. 7).

¹⁴ Ex. 1 (Dkt. No. 79, Ex. 2).

May 4, 2002, upon his death his interest in the Subject Property transferred by Texas probate law to his children¹⁵: Elizabeth Muñoz and Daisy Muñoz.¹⁶

7. On August 19, 2019, the United States filed a Motion for Substitution requesting the heirs of Lucia G. Muñoz be added as Defendants for and in place of Lucia G. Muñoz, deceased.¹⁷

8. The Court granted the motion for substitution on August 23, 2019¹⁸, and upon proper service, Defendants: Alma Muñoz, Carmen Muñoz, Azucena Muñoz Tressler, Joshua Kusbel, Michael Kusbel, Kezia De La Garza, Leonardo De La Garza, and Elizabeth Muñoz were added to this case as interested parties for the Subject Property.¹⁹

9. Thus, the United States and Defendants Alma Muñoz, Carmen Muñoz, Azucena Muñoz Tressler, Joshua Kusbel, Michael Kusbel, Kezia De La Garza, Leonardo De La Garza, and Elizabeth Muñoz, now make this joint motion for an Order: (a) establishing one thousand and 00/100 dollars (\$1,000.00) as the total just compensation for Tracts RGV-RGC-1079 and RGV-RGC-1079E (b) granting the United States possession of Tracts RGV-RGC-1079 and RGV-RGC-1079E; and (c) disbursing the stipulated amount of just compensation, as directed below, from the funds on deposit in the Registry of the Court. As grounds for this motion, the parties jointly state:

- a. The United States and Defendants confirm and agree that the full and just compensation payable by the United States for the taking of Tracts RGV-RGC-1079 and RGV-RGC-1079E shall be the sum of one thousand and 00/100 dollars (\$1,000.00) plus any accrued interest, which sum is all inclusive and in full satisfaction of any claims of whatsoever

¹⁵ Tex. Est. Code Ann. § 201.001(b) and 201.101(b) (Vernon).

¹⁶ Ex. 6, Aff. of Heirship for Matilde Muñoz, Jr. (Dkt. No. 79, Ex. 8).

¹⁷ Dkt. No. 79.

¹⁸ Dkt. No. 80. The Court's Order also added Josue Samuel Muñoz and Daisy Muñoz as interested parties, but they were dismissed by the Court (Dkt. Nos. 90 & 94, respectively) after both parties executed Disclaimers (Dkt. Nos. 88 & 91, respectively).

¹⁹ Dkt. Nos. 52, 81-87.

nature by the Defendants against the United States for the institution and prosecution of the above-captioned action.

- b. The parties respectfully request that judgment be entered against the United States in the amount of one thousand and 00/100 dollars (\$1,000.00) for its taking of Tracts RGV-RGC-1079 and RGV-RGC-1079E, along with any accrued interest.
- c. The United States has previously deposited one thousand and 00/100 dollars (\$1,000.00) into the Registry of the Court. The United States and Defendants agree that title to Tracts RGV-RGC-1079 and RGV-RGC-1079E has vested in the United States by operation of law.
- d. The parties agree that the United States shall be entitled to immediate possession of fee Tract RGV-RGC-1079, and all persons in possession or control of the interests taken in this property should be ordered by the Court to surrender possession of the same to the United States. The temporary easement acquired has long been expired, thus possession of Tract RGV-RGC-1079E is not being sought.
- e. The total sum of one thousand and 00/100 dollars (\$1,000.00) currently on deposit with the Registry of the Court, with accrued interest, shall be subject to all real estate taxes, liens, encumbrances, and charges of whatsoever nature existing against the interests in the property taken in this proceeding at the time of vesting of title in the United States, and all such real estate taxes, liens, encumbrances, and charges of whatsoever nature shall be payable and deductible from this sum.
- f. Upon the Court's Order entering judgment in accord with this stipulation of just compensation for Tracts RGV-RGC-1079 and RGV-RGC-1079E, the parties seek immediate disbursement of one thousand and 00/100 dollars (\$1,000.00) on deposit in the

Registry of the Court, together with any accrued interest earned thereon from the initial deposit date of June 25, 2008²⁰, to be disbursed as follows:

- i. \$125.00 shall be payable by check to Alma Muñoz, with accrued interest from the date of deposit;
 - ii. \$125.00 shall be payable by check to Carmen Muñoz, with accrued interest from the date of deposit;
 - iii. \$125.00 shall be payable by check to Azucena Muñoz Tressler, with accrued interest from the date of deposit;
 - iv. \$125.00 shall be payable by check to Joshua Kusbel, with accrued interest from the date of deposit;
 - v. \$125.00 shall be payable by check to Michael Kusbel, with accrued interest from the date of deposit;
 - vi. \$125.00 shall be payable by check to Kezia De La Garza, with accrued interest from the date of deposit;
 - vii. \$125.00 shall be payable by check to Leonardo De La Garza, with accrued interest from the date of deposit; and
 - viii. \$125.00 shall be payable by check to Elizabeth Muñoz, with accrued interest from the date of deposit.
- g. Defendants warrant (a) they are the owners of the Subject Property taken in this proceeding; (b) they have the exclusive right to the compensation, herein; excepting the interests of parties having liens, encumbrances of record, and unpaid taxes and

²⁰ Dkt. No. 4.

assessments, if any; and (c) that no other party is entitled to the same or any part thereof by reason of any unrecorded agreement.

- h. In the event that any other party is ultimately determined by a court of competent jurisdiction to have any right to receive compensation for the interest in the property taken in this proceeding, Defendants shall refund into the Registry of the Court the compensation distributed herein, or such part thereof as the Court may direct, with interest thereon at an annual rate provided in 40 U.S.C. § 3116 from the date of receipt of the respective deposit by Defendants, to the date of repayment into the Registry of the Court.
- i. Defendants shall be responsible for their own legal fees, costs, and expenses, including attorney fees, consultant fees, and any other expenses or costs.
- j. There being no outstanding taxes or assessments due or owing, Defendants are responsible for the payment of any additional taxes or assessments which they otherwise owe on the interest in the property taken in this proceeding on the date of taking.
- k. Defendants shall take no appeal from any rulings or judgments made by the Court in this action, and the parties consent to the entry of all motions, orders, and judgments necessary to effectuate this stipulated judgment.
- l. Defendants shall save and hold harmless the United States from all claims or liability resulting from any unrecorded leases or agreements affecting the interests in the property taken in this proceeding on the date of taking.
- m. This joint stipulation and motion is binding on the heirs, trustees, executors, administrators, devisees, successors, assigns, agents, and representatives of Defendants.

- n. There are still tracts remaining in this case that have outstanding issues of just compensation, the United States requests this case remain open and pending on the Court's docket.

CERTIFICATE OF CONFERENCE

Plaintiff has conferred with Defendants Carmen Muñoz, Joshua Kusbel, Michael Kusbel, Kezia De La Garza, and Elizabeth Muñoz by phone on December 9, 2019, Defendants Alma Muñoz and Azucena Muñoz Tressler by phone on December 10, 2019, and Defendant Leonardo De La Garza by email on December 11, 2019, and all are unopposed to this Amended Joint Motion.

Respectfully submitted,

RYAN K. PATRICK
United States Attorney
Southern District of Texas

By: *s/ Megan Eyes*
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Attorney in Charge for Plaintiff

CERTIFICATE OF SERVICE

I certify that on December 12, 2019, a copy of the foregoing was electronically filed in the CM/ECF system, which will automatically serve a Notice of Electronic Filing on counsel of record, and by regular U.S. mail to all *pro se* Defendants listed in this cause.

By: *s/ Megan Eyes*
MEGAN EYES
Assistant United States Attorney

DEFENDANTS:

By:


ALMA MUÑOZ

Social Security # 

By:


CARMEN MUÑOZ

Social Security # 

By:


AZUCENA MUÑOZ TRESSLER


Social Security # 

By:


MICHAEL KUSBEL

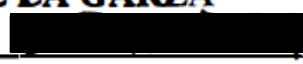
By:


KEZIA DE LA GARZA

Social Security # 


By:


LEONARDO DE LA GARZA

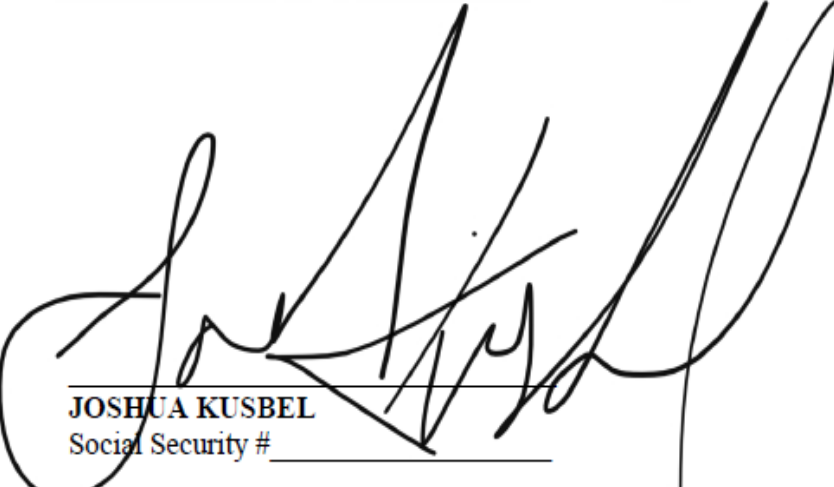
Social Security # 

By:


ELIZABETH MUÑOZ

Social Security # 

By:


JOSHUA KUSBEL

Social Security # _____